No. 94-1347

Supreme Court, U.S.
FILED
MAR 13 1995
OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1994

RAUL A. IPARRAGUIRRE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

BEST AVAILABLE COPY

In the Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-1347

RAUL A. IPARRAGUIRRE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the court of appeals erred in reversing the order of the district court granting a judgment of acquittal following a jury verdict of guilty.

1. On April 25, 1990, petitioner was indicted by a grand jury sitting in the Southern District of Florida. He was charged in two counts of an eleven-count superseding indictment with conspiracy to possess cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1) and 846; and attempt to possess cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1) and 846.

On October 8, 1992, the trial court granted a post-verdict judgment of acquittal. Pet. App. 36-63. The court concluded that, even though petitioner was

arrested while driving a car containing 196 kilograms of cocaine, "neither [his] limited relationship to the car and contraband, nor the other indicia of his knowledge are strong enough to support an inference that he is guilty beyond a reasonable doubt." Pet. App. 63.

The court of appeals reversed. Pet. App. 6-35. The court found "that the totality of [the] circumstances are sufficient to establish guilt beyond a reasonable doubt in the minds of reasonable jurors." *Id.* at 34.

2. Petitioner contends (Pet. 17-23) that the court of appeals, in finding the evidence sufficient to support his convictions, piled "inference upon inference," in derogation from this Court's admonition in *Ingram* v. *United States*, 360 U.S. 672 (1959). Whatever the merits of petitioner's contention, it is not presently ripe for review by this Court. The court of appeals' decision is not a final judgment against petitioner. After imposition of sentence by the district court, petitioner can again take an appeal to the court of appeals raising any issues that may be available to him and preserving the claim he has raised here. If the court of appeals affirms the final judgment against him, petitioner will then be able to present his present contention to this Court, together with any other claims he may have, in a petition for a writ of certiorari. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

---

* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DREW S. DAYS, III
Solicitor General

MARCH 1995